

**PROPOSED AMENDMENTS TO THE
RULES OF CRIMINAL PROCEDURE FOR THE
UNITED STATES DISTRICT COURTS***

Rule 11. Pleas

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1 (c) ADVICE TO DEFENDANT. Before accepting a plea of
2 guilty or nolo contendere, the court must address the defendant
3 personally in open court and inform the defendant of, and determine
4 that the defendant understands, the following:

5 (1) the nature of the charge to which the plea is offered,
6 the mandatory minimum penalty provided by law, if any, and
7 the maximum possible penalty provided by law, including the
8 effect of any special parole or supervised release term and,
9 when applicable, that the court may also order the defendant
10 to make restitution to any victim of the offense; and

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COMMITTEE NOTE

The Committee believes that a technical change, adding the words "or supervised release," is necessary to recognize that defendants sentenced under the guideline approach will be concerned about supervised release rather than special parole. See 18 U.S.C. 3583, and 3624 (e). The words "special parole" are left in the rule, since the district courts continue to handle pre-guideline cases.

*New matter is underlined; matter to be omitted is lined through.

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**Rule 32.1. Revocation or Modification of Probation or
Supervised Release**

1 (a) REVOCATION OF PROBATION OR SUPERVISED RELEASE.

2 (1) Preliminary Hearing. Whenever a probationer person is
3 held in custody on the grounds that the probationer person has
4 violated a condition of probation or supervised release, the
5 probationer person shall be afforded a prompt hearing before
6 any judge, or a United States magistrate who has been given
7 authority pursuant to 28 U.S.C. § 636 to conduct such hearings,
8 in order to determine whether there is probable cause to hold
9 the probationer person for a revocation hearing. The
10 probationer person shall be given

11 (A) notice of the preliminary hearing and its purpose
12 and of the alleged violation of probation;

13 (B) an opportunity to appear at the hearing and present
14 evidence in the probationer's person's own behalf;

15 (C) upon request, the opportunity to question
16 witnesses against the probationer person unless, for good
17 cause, the federal magistrate decides that justice does
18 not require the appearance of the witness; and

19 (D) notice of the probationer's person's right to be
20 represented by counsel.

21 The proceedings shall be recorded stenographically or by an
22 electronic recording device. If probable cause is found to
23 exist, the probationer person shall be held for a revocation

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24 hearing. The probationer person may be released pursuant to
25 Rule 46(c) pending the revocation hearing. If probable cause is
26 not found to exist, the proceeding shall be dismissed.

27 (2) Revocation Hearing. The revocation hearing, unless
28 waived by the probationer person, shall be held within a
29 reasonable time in the district of probation jurisdiction. The
30 probationer person shall be given

31 (A) written notice of the alleged violation of
32 probation;

33 (B) disclosure of the evidence against the
34 probationer person;

35 (C) an opportunity to appear and to present
36 evidence in the probationer's person's own behalf;

37 (D) the opportunity to question adverse witnesses; and

38 (E) notice of the probationer's person's right to be
39 represented by counsel.

40 (b) MODIFICATION OF PROBATION OR SUPERVISED RELEASE.

41 A hearing and assistance of counsel are required before the terms or
42 conditions of probation or supervised release can be modified, unless
43 the relief to be granted to the probationer person on probation or
44 supervised release upon the probationer's person's request or the
45 court's own motion is favorable to the probationer person, and the
46 attorney for the government, after having been given notice of the
47 proposed relief and a reasonable opportunity to object, has not

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48 objected. An extension of the term of probation or supervised
49 release is not favorable to the ~~probationer~~ person for the purposes of
50 this rule.

COMMITTEE NOTE

The amendments recognize that convicted defendants may be on supervised release as well as on probation. See 18 U.S.C. §§ 3583, and 3624(e).

Rule 40. Commitment to Another District

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1 (d) ARREST OF PROBATIONER OR SUPERVISED RELEASE.

2 If a person is arrested for a violation of probation or supervised
3 release in a district other than the district having ~~probation~~
4 jurisdiction, such person shall be taken without unnecessary delay
5 before the nearest available federal magistrate. The federal
6 magistrate shall:

7 (1) Proceed under Rule 32.1 if jurisdiction over the
8 ~~probationer~~ person is transferred to that district; pursuant to
9 ~~18 U.S.C. § 3653;~~

10 (2) Hold a prompt preliminary hearing if the alleged
11 violation occurred in that district, and either (i) hold the
12 ~~probationer~~ person to answer in the district court of the
13 district having ~~probation~~ jurisdiction or (ii) dismiss the
14 proceedings and so notify that court; or

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15 (3) otherwise order the ~~probationer~~ person held to answer
16 in the district court of the district having **probation**
17 jurisdiction upon production of certified copies of the
18 **probation order** judgment, the warrant, and the application for
19 the warrant, and upon a finding that the person before the
20 magistrate is the person named in the warrant.

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COMMITTEE NOTE

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